

SHARK

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From

Kevin Minoli/DC/USEPA/US

To

Jessica Kao/R9/USEPA/US@EPA
Jessica Kao/R9/USEPA/US,

CC

BCC

Description

Form Used: Reply

Subject

Re: Fw: on the santa cruz from tony davis

Date/Time

09/04/2008 05:39 PM

Contributor

Kevin Minoli

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Hey Jessica- Thanks for forwarding this. I did ask Greg about it and he said the reporter seemed very confused in his conversations with Ben, but that they sent him a written response that they hoped would resolve the confusion. I'm not sure whether you were planning on responding to his email, but seeing Ben has spoken with him a couple of different times on this point it may be best for him to work with Ben (or Ben's office) rather than think he hears one thing from Ben and one thing from you.

Kevin
Jessica Kao/R9/USEPA/US

Jessica Kao/R9/USEPA/US

09/03/2008 07:12 PM

To Alexis Strauss/R9/USEPA/US@EPA, Nancy
Marvel/R9/USEPA/US@EPA, Laurie
Kermish/R9/USEPA/US@EPA, DavidW
Smith/R9/USEPA/US@EPA, Brian
Frazer/DC/USEPA/US@EPA, Kevin
Minoli/DC/USEPA/US@EPA

cc

Subject Fw: on the santa cruz from tony davis

Note the reporter's characterization of Ben's statement on (a)(2) and the follow-up questions to HQ.

-----Forwarded by Jessica Kao/R9/USEPA/US on 09/03/2008 04:00PM -----

To: Jessica Kao/R9/USEPA/US@EPA
From: Tony Davis <tdavis789@yahoo.com>
Date: 08/30/2008 02:17PM
Subject: on the santa cruz from tony davis

Jessica,

I interviewed Benjamin Grumbles this week on the whole question of water quality regulation and protection of the Santa Cruz were it not to be declared navigable. He told me he believes he can insure protection of the Santa Cruz by classifying it as an interstate stream.

Today, I sent EPA-DC officials an email asking them to tell me, essentially, how they know that would be true. Do they know that the river as an interstate stream would pass either of the two tests for jurisdictional status laid out by the conflicting opinions in Rapanos (Scalia and Kennedy)? If so, how? Or, do they know that declaring the Santa Cruz an interstate river would allow it to avoid having to pass one of those Rapanos tests, and if so, how?

I'd be curious to get your take on these questions, on or off the record. I did quote you in a Sunday story, running tomorrow, about your views on the effects on pollution controls if a stream isn't declared jurisdictional, but I also added that you wouldn't speculate on the specific effects of such a non-declaration on the Santa Cruz and its tributaries.

But this is a different question. As Rapanos now stands, can the EPA insure that a non-navigable Santa Cruz could be protected using some other means like declaring it an interstate river?

Below is my letter to EPA Washington. I don't expect an answer from them or you today but I would like to get this resolved for future use.

Thanks,

Tony Davis
520-349-03 50

To EPA:

Last week, Mr. Grumbles told me that he thought that if necessary, he could insure protection for the Santa Cruz River under Rapanos, although not for or necessarily for the tributaries, by classifying it as an interstate water that would be jurisdictional --- as an alternative to declaring it navigable.

My question:

In the Rapanos court ruling I saw two tests used to determine if a water body is jurisdictional. One, from Justice Kennedy, was for a significant nexus to a navigable stream. Another, from Justice Scalia, was for "relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are

described in ordinary parlance as 'streams[,] . . . oceans, rivers, [and] lakes.'" That is an oversimplification but that's quoted directly from the ruling.

So I'm wondering. How does the entire Santa Cruz meet either of those definitions if

a)No determination has been made (which I believe it has not been) as to whether the Santa Cruz has a significant nexus to a navigable stream?

b)Only the two stretches of river that the Corps originally declared navigable and a few miles south of the southernmost stretch appear on immediate investigation to meet the relatively permanent water test, since the rest of the river is dry most of the year and carries water only after storms.

Or, is Mr. Grumbles saying that classifying the S Cruz as an interstate stream allows it to get around having to meet a Rapanos test? If so, how is that possible?

Thank you very much. I just want to get this pinned down.

Sincerely,

Tony Davis
Reporter
Arizona Daily Star
520-806-7746
520-349-0350
